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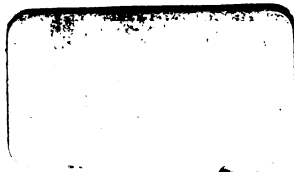
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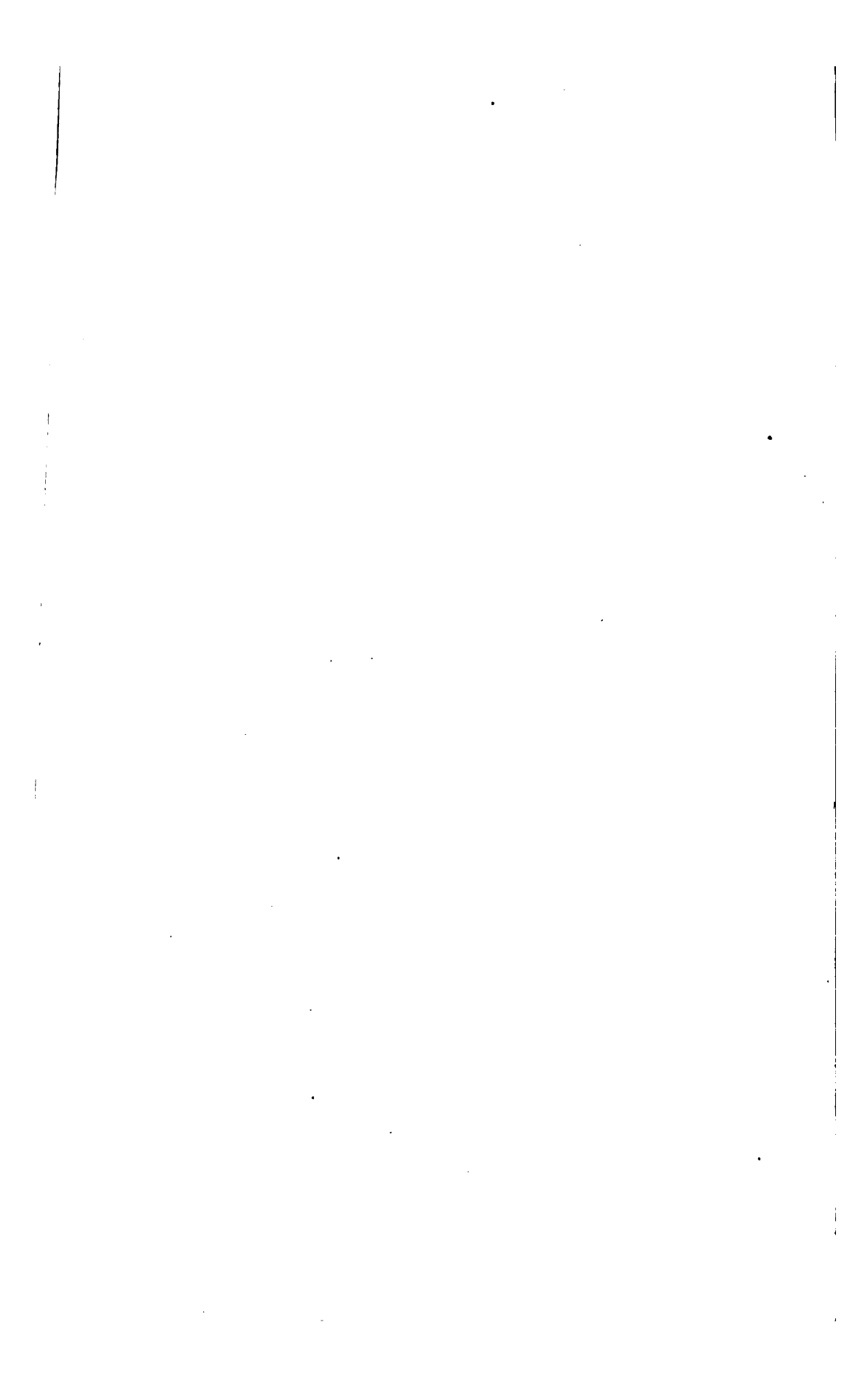
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PROCEDURE BEFORE THE
INTERSTATE COMMERCE
COMMISSION

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PROCEDURE BEFORE THE INTERSTATE COMMERCE COMMISSION

INTRODUCTION

The Interstate Commerce Commission, under the act creating it and endowing it with powers, and under the decisions of the Supreme Court, is a "tribunal" vested with the power of hearing evidence and determining what are reasonable practices and rates of transportation, and what constitutes unjust discrimination or undue preference.

This sentence describes in a word nine-tenths of the Commission's functions, so far as the shipping public is concerned. The Commission has many other duties and powers which directly affect the carriers and which have been heaped upon it from time to time as Congress has seen fit, but the shippers in interstate commerce are chiefly concerned with its fundamental remedial power above outlined. It is safe to say that nearly all of the time of the Commission as a body and of the Commissioners as individual members is taken up with enforcing the first four sections of the law that contain the matters above specified.¹

¹ Other features of the Commission's jurisdiction will be referred to in succeeding pages. No adequate knowledge of the Commission and its work can be attained without a careful reading of the Act, in connection with this treatise.

How does a complaining shipper proceed to call the attention of this tribunal to his particular grievance, and invoke the operation of this governmental force? Under our Anglo-Saxon institutions all procedure under law must be conducted upon a definite and orderly basis so that no arbitrary action shall be possible and so that all interests affected may receive due and proper consideration.

The Commission is not a court, but operates as an arm of Congress, and therefore belongs to the legislative branch of government. It reports to Congress directly and not through the President or other executive officer; and this further emphasizes its independent character and its affiliation with the legislature as distinguished from the executive and judicial departments of government. The Commission has not inaptly been likened to a special permanent committee of Congress; and this is but natural, since it is to Congress that the commerce clause of the Constitution grants the power to regulate commerce between the states.

With this general statement of the legal status of the Commission and its jurisdiction, we are somewhat prepared to comprehend its procedure when it is called upon to enforce the provisions of the Act to Regulate Commerce. The Act itself sets forth very simple rules of pleading and evidence. As to the former, it states that any person, firm, corporation, etc.,² may file a petition briefly stating the facts complained of against carriers subject to the Act. The Commission is then commanded

² Sec. 18 of the Act; also Commission's Rules II and III, which are shown in the appendix of this treatise, give instructions in the preparation and filing of complaints.

to forward a copy thereof to the carrier or carriers, who shall satisfy or answer the same in writing.

The Commission is then empowered to investigate the matter, and the principal rule of evidence specified in the Act is that all parties in interest shall be given a full public hearing. When this simple procedure has been pursued, the Commission is empowered to exercise its discretion and, after consideration of all the facts of record, to make its findings and enter an order fixing the reasonable or non-discriminatory rate or practice for the future.³

So much for the requirements of the statute. Simple though these requirements are, they must be methodically and carefully observed, because unless this is done the order of the Commission, which the complainant may finally obtain in his favor, can be successfully attacked in the courts if the carrier can show that the Commission has not proceeded in accordance with the requirements of the Act.

The Commission has been in existence for twenty-six years and has always held to the view that the practice before it should be as simple and devoid of technicalities as possible. It must, however, proceed in accordance with the steps outlined in the statute or its findings will not be binding upon the carriers.

It is from this twofold point of view that the Commission has drafted its requirements. It has made them as simple as possible, yet has safeguarded the procedure so that no technicalities can be raised, should its orders be finally assailed in the courts. The procedure involved in the consideration of each case is symbolized in the

³ Sec. 15 of the Act.

formal wording of the order which always sets forth the fulfilment of the terms of the Act as follows: "This case being at issue, upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having made a full report containing its findings of fact and conclusions thereon, it is ordered that"—then follow the requirements which the Commission lays upon the carrier or carriers.

INFORMAL AND FORMAL CASES

(a) *The Informal Case*

The simplest procedure before the Commission occurs upon what is designated by the Commission (there being no special reference thereto in the statute) as the Informal Docket. This process is nothing more or less than a correspondence bureau which receives letters from the public in reference to any matter within the jurisdiction of the Commission. The Commission gives such communications a file number and takes up the matter by letter with the carriers, and through the medium of this correspondence an adjustment is reached if possible. The annual report of the Commission to Congress shows that during the past year 6,550 such informal matters were listed. Nothing is required except a letter to the Commission setting forth definitely and succinctly the facts, and upon its receipt the Commission proceeds in the informal manner above outlined.

(b) *The Formal Case*

It frequently happens, however, that after a matter has been under correspondence for some time, the Commis-

sion comes to the conclusion that it is useless to pursue it further in an informal way and thereupon advises the complainant that the only course left open under the law is to file a formal complaint. In giving this advice the Commission is putting the complainant upon the only road which, if followed up, will lead to a point where the statute will give the Commission power to compel the carrier to grant such relief under the law as the Commission may finally conclude that the complainant is entitled to.

A petition or complaint⁴ may be filed as the result of the failure of an adjustment upon the informal docket as above described; or as is the case in the more important complaints, the matter may be first called to the attention of the Commission by the filing of a formal complaint. When this course is decided upon it becomes highly important to observe the Commission's rules of practice. These rules are revised from time to time, and the 1913 revision of them is given as an appendix hereto. They contain forms of complaints and answers, etc., and other information which should be referred to and literally followed.

Form of petition.—The form of petition or complaint is set out in the rules of the Commission in as simple a manner as possible, yet in practical experience a very large percentage of the petitions received at the Commission have to be returned and attention called to the plain requirements of the Act and the rules. In a recent decision of the Commission, Commissioner Prouty sets

⁴ In filing petitions, briefs, petitions of intervention, or petitions for rehearing, it is better to file them in printed form, as they are far more apt to receive a wider circulation and consequently greater consideration in the Commission.

forth that the complaint must state the facts so that the Commission may apprehend the point at issue and the defendant be advised as to what it shall answer or defend.^{4*}

When the petition is accepted by the Commission it receives a docket number in the formal docket, on which 755 cases were entered last year. There is also bound with the petition, under the same docket number, all the correspondence and exhibits and other papers that have come to the Commission bearing upon this particular subject matter of complaint. This, with all subsequent proceedings in the case bound with it, becomes a public record and no portion of it can leave the possession of the Commission. The petitioner should not undertake to make up the record in the case, however, until the proceeding comes on for hearing.

Answer.—The case is at issue as soon as the twenty days⁵ have expired within which the carriers are to satisfy or answer the complaint.

It occasionally happens that the record is completed to the satisfaction of both parties and the Commission by the filing of complaints and answers or by the filing of a statement of facts agreed to by both parties, and when it is so stipulated by the parties the Commission will, in its discretion, proceed to determine the issues raised and nothing further has to be done by the parties.⁶

Hearing.—In a large majority of cases, however, the carriers deny the allegations in the complaint, and when the issues are so joined the Commission sets the case

^{4*} 26 I. C. C. Rep., 382.

⁵ Thirty days, when the carrier's office is west of El Paso, Salt Lake City, or Spokane.

⁶ Commission's Rules IV and V, shown in the appendix.

down for formal hearing in a federal court room at the complainant's home or at some convenient point in that general locality.

The case will be heard either by a Commissioner in person or by an Examiner. In recent years, due to the pressure of business before the Commission, comparatively few cases are heard by the Commissioners themselves, although in earlier days the testimony in all cases was heard by the Commissioners, and frequently in the presence of the entire Commission. The chances are, however, that the complainant will receive formal notice from the Commission that his case is set for hearing at 10 o'clock on a certain morning in the federal court rooms before an Examiner, mentioning him by name. The writer has sat as Examiner in hundreds of these proceedings in many sections of the country.

There probably always will be a discussion as to just what the powers of the sitting Examiner are. The law says that the Examiner "shall have power to administer oaths, examine witnesses and receive evidence." The narrowest possible view to take of this wording is that he has no control over the introduction of evidence and that he sits merely to administer oaths and to receive whatever the parties desire to make a part of the record. This view is entirely too narrow and has never received the sanction of the Commission. As a pure matter of law it is doubtful whether a Commissioner himself acting individually has any more power or control over the record than does an Examiner, for the reason that the acts of each are only final under the law when they have received the approval of and become the acts of the Commission.

The record in the case, including the pleadings and such other papers as have reached the Commission, will be present at the hearing, which is essentially an investigation into the facts concerning the particular transaction complained of. It is the duty of the Examiner representing the Commission to guide the evidence towards the disclosure of the necessary facts bearing upon the issues in the complaint so as to enable the Commission to apply the law thereto and administer and enforce the statute as commanded by Congress.

A question that is frequently put by the complainant at the opening of the hearing is, What am I expected to do? The answer is simple. He is supposed to be prepared to produce his proof as to the matters alleged in his complaint. While the Commissioner or Examiner will aid him in making the record in such form as will conform to orderly arrangement, and will attempt to see that no essential matters are left uncovered, and will make such other inquiry and examination as he may deem advisable under the circumstances, still the complainant should bear in mind that it is his case, and while the outcome of it may be and frequently is of a public nature, the duty rests upon him to produce competent witnesses personally cognizant of the facts which are to be proved.

It is not sufficient for the complainant to mass together disconnected allegations and then dump his troubles on the Commission for it to unravel and make out a case for him, should he be found to have one. A complainant who attempted this some years ago was advised in the Commission's report that it would not consider a case "thrown at it" in this fashion. It has been necessary for the Commission to repeat this warning from time to time.

The theory of the law is that the proceedings before the Commission partake of a public character, as the carriers are exercising a public function; that inasmuch as the Government has adopted the policy of permitting privately owned companies to own and operate the public highways of interstate commerce, it is the duty of the Government to guarantee to the public adequate service at the hands of these carriers at reasonable rates and without unjust discrimination. Following out this theory, the law attempts to make its operation as simple and as free from expense as possible. The case is set down for hearing at the home of the complainant so as to avoid traveling expense to him, while the carrier's representatives and the Commission's representative journey there for his convenience. The expensive transcript of record is supplied him free of charge and at the hearing the Commission or its representative is under the law required to make a full investigation, the result of which may ensue to the benefit of the complainant. Notwithstanding all this, however, the complainant's case must of necessity largely depend upon his own preparation in advance, and the greater his skill therein the better his chances of winning.

The duties of the parties to a case and the practice of the Commission is well expressed by Commissioner Clements, in a proceeding before him, as follows:

Neither party to the case presented any witnesses at the hearing and there is no evidence before the Commission other than the small exhibit of compo-board and the expense bill covering the shipment. Whatever may be the merits of this complaint, it is clearly evident that the Commission has not before it the presentation of facts, circumstances, and conditions bearing upon the question of the reasonableness of the

rate charged, which appears to have been in accordance with the published tariff, necessary to an intelligent and proper determination of the matters in question. Without other showing than that just indicated, we are asked to condemn the existing rate and to establish a just and reasonable rate to be applied in the future and to enter an order awarding reparation, which order and findings may be received in court as *prima facie* evidence of the facts therein stated. We cannot upon mere complaint and suggestion justly take such important action.

While it is the duty and practice of the Commission to exhaust its activities in developing the pertinent facts necessary, to the full investigation and hearing of complaints before it, it is but reasonable that a party complaining should also take such action as may be within his power to aid the Commission by presenting such evidence as will show the pertinent facts, circumstances, and conditions bearing upon the questions involved. Upon the showing made the complaint will be dismissed without prejudice. It will be so ordered.⁷

It is apparent therefore that if interests of considerable importance are involved the preparation and trial of a case should be in the hands of one skilled in the work before the Commission. The practice has of necessity become highly specialized. In the course of many years numerous principles as to reasonableness of rates and discriminatory practices have developed. Other matters, such as the construction of the published tariffs and the comprehension of the reports of carriers filed with the Commission, have become important and unless the case is a very simple one, a knowledge and familiarity with all these things is essential.

The carriers, as a rule, are ~~ably~~ represented at the hearing by counsel and competent traffic men, who listen carefully to all that the complainant and his witnesses

⁷ 19 I. C. C. Rep., 110.

have to say, who take advantage of the opportunity open to all parties to cross examine witnesses, and who introduce evidence on behalf of the carriers.

Printed briefs.—When the hearing is closed and all parties have been fully heard, the parties are at liberty to prepare printed briefs of the record and file the same with the Commission on the dates fixed at the closing of the hearing by the Commissioner or Examiner.* The Commission will not extend these dates except in rare cases and for good cause shown, and a brief received after the date named at the hearing will be returned by the Commission. The Commission's attitude in this respect will not permit the delays in the proceedings so often taken advantage of by attorneys in the handling of court cases.

Oral argument.—If the case is one of importance, the parties, upon application to the Commission by letter, will be given an opportunity to argue the case orally before the whole Commission in Washington. There can be no question of the importance of taking advantage of this opportunity if the case is one that warrants the time and expense. While the record as made receives careful consideration by the Commission, an oral argument is the one opportunity the parties have to make their plea, in person or by counsel, face to face with the seven men upon whom the law reposes the responsibility of deciding the issue.

It will be seen, therefore, that there are four points in the proceedings at which a formal case may be submitted to the Commission for decision: (1) upon the

* Instructions for preparing briefs are clearly set forth in Commission's Rule XIV, shown in the appendix.

filing of complaint and answers when the parties so stipulate and the Commission, from an examination of the pleadings or agreed statement of facts, concludes that nothing further is necessary to aid it in applying the law thereto; (2) at the conclusion of the hearing after both parties waive their right to file briefs and have oral argument; (3) at the date fixed for the filing of the reply brief, should no argument be desired; (4) at the close of the oral argument.

Adjournments and extensions of time.—In but few cases and only for good cause shown does the Commission continue a hearing or extend time, it being the rule that the parties must appear at the time set, prepared to submit everything they desire to have go into the record before the conclusion of the hearing. The Commission looks with disfavor upon continuances and adjourned hearings.^{8a} When dates have been set for filing briefs and oral argument, the Commission does not readily extend the time, as the pressure of new cases will not permit.

Depositions.—Section 12 of the Act permits the testimony of witnesses to be taken by deposition in the manner and form there prescribed, but as a practical matter this method will not be open to parties except upon very exceptional showing to the Commission of conditions which make it necessary. The experience of the Commission has been that little is to be gained from information derived in this way. The proceeding under a formal complaint is an investigation rather than a lawsuit and as the word indicates, the investigation is for the purpose of throwing all possible light upon the subject for consideration. In this respect it is different from the

^{8a} *Manufacturers Ry. Case*, 28 I. C. C. Rep. 95.

making of a record according to the strict rules of evidence obtaining in suits at law.

The finding of the Commission must, under a recent decision of the Supreme Court,⁹ conform to the record in the case, and the record is now, more than ever, of recognized importance in interstate commerce cases, and it is necessary to have in the record all that is relied upon in substantiation of the allegations contained in the petition. While from a reading of the Act one might naturally suppose that many of the records before the Commission were made by depositions, as a matter of fact it is the rarest thing in the actual work before the Commission. It is found essential in the administration of the law to have present at the hearing either one of the Commissioners or an Examiner in order that the proceedings shall bring out all the facts and the record be completed under the control of one skilled in the law and in transportation matters, and this would be impossible if depositions before uninformed magistrates composed the record. In a certain case in which the record was made by depositions and no opportunity afforded the Commission to satisfy itself of the facts as it could have done at a hearing, the Commission commented unfavorably upon the record and was compelled to dismiss the complaint.¹⁰

The proceedings at the hearing are all stenographically reported under the absolute control of the Commissioner or Examiner presiding, and one copy of the record is furnished free to the leading complainant and one copy free to the leading respondent in the case. The Com-

⁹ Louisville & Nashville Case, 227 U. S. 88.

¹⁰ 16 I. C. C. Rep., 549.

mission retains the original. During the year 1912 the Commission conducted 1,154 hearings at which 125,000 pages of testimony were taken.

As a general rule it will not be more than six months from the filing of the complaint before all the necessary steps provided in the statute will have been taken and the decision of the Commission published. The law requires the Commission to serve a copy of its opinion and order upon the parties to the case.

Court Proceedings.—The Supreme Court has held in the Procter and Gamble Case ^{10a} that the Commerce Court, which now reviews the findings of the Commission,¹¹ has no jurisdiction to consider a case in which the Commission has entered an order dismissing the complainant's petition or, in other words, refused to grant the relief asked for by the complainant. As to whether an unsuccessful shipper can have his case reviewed in the federal district court is an open question, but one that offers sufficient promise to justify its attempt.

This whole matter is now pending before Congress in an attempt on the one hand to abolish the Commerce Court and turn this business all back into the United States district courts throughout the country, while the opponents of this policy seek to retain the Commerce Court and extend its jurisdiction to include cases wherein the shipper has been denied relief at the hands of the Commission.

Should the carrier so desire, it can take into court any affirmative order of the Commission commanding it to

^{10a} 225 U. S. 282.

¹¹ After January 1, 1914, the Commerce Court will be abolished and these cases will go to the United States district courts throughout the country.

reduce its rates or change its practices. The Supreme Court has finally established the doctrine that the only grounds upon which a court can interfere with a finding of the Commission are those arising when some constitutional right of the carrier has been impaired, or when the Commission has acted arbitrarily or has exceeded the powers conferred upon it by the Act.^{11a} As to just what the existing limitations are upon the control by the courts over decisions of the Commission is a question bristling with law points which it will not be necessary for present purposes to discuss, but it can be stated that the practical result has been that the carriers have been greatly discouraged during the past two or three years by the decisions of the Supreme Court from contesting the Commission's orders in the courts.

In the Humboldt Steamship Company Case,¹² the Supreme Court has decided that when the Commission refuses to exercise its jurisdiction, in accordance with the provisions of the Act, it can be compelled to do so by a writ of mandamus issuing out of the Supreme Court of the District of Columbia.

We have now traversed the entire course that a cause of action before the Commission can take from its possible inception in a letter from a complainant to the Commission until it is passed upon by the Supreme Court of the United States. As a practical proposition, the vast majority of cases never get any further than an order of the Commission. While the carriers resort to the courts only in a small per cent of the total cases decided, the few which have gone up from the Commission have as

^{11a} Louisville & Nashville Case, 227 U. S. 88, and cases there cited.

¹² 224 U. S. 474.

a rule involved interests or questions of very great magnitude.

The preceding pages have dealt with the course that is pursued by the ordinary case. There remain a number of other subjects to be discussed which frequently come up in the work before the Commission.

PETITIONS FOR REHEARING OR REOPENING OF CASE

When the decision of the Commission is entered, one of the parties may feel sufficiently aggrieved with the result to desire to call the matter to the attention of the Commission again. A party may also desire to reopen a case after final submission. The Act affords to such party the right to file with the Commission a petition for a rehearing or reopening. It lies within the discretion of the Commission whether it will grant this petition or not. Upon its receipt it is carefully examined to see whether it holds out promise that a further hearing will develop any facts that would materially affect the case, whether the Commission has incorrectly understood the facts or made erroneous deductions from the record, or whether it has committed errors of law.

It is not an infrequent occurrence for the Commission to receive petitions for rehearing or reopening from either one party or the other and the Commission is always ready and willing to reconsider a matter when there is *prima facie* evidence showing that any injustice may have been done. It has full power under the statute to modify, amend, or annul its findings and orders at any time, and while it will not reopen or prolong a case after it has once been disposed of, except for good cause shown, the Commission is, in the words of Commissioner

McChord, open day and night for the purpose of correcting mistakes that it may have made.

If the petition for rehearing or reopening is granted, the case will be set down again for hearing and the course already outlined will be pursued and a supplemental report and order entered by the Commission. Should the petition for rehearing or reopening be denied, the parties will simply receive a formal notice to that effect, and the litigation, so far as the Commission is concerned, is closed.

INTERVENERS

The subject matter of a complaint filed may prove to be of vital interest to many shipping interests besides the complainant, and, moreover, although the complainant may name a limited number of carriers as parties defendant, the effect of the order upon carriers other than those named may be of the first importance.

Take, for instance, a complaint attacking the rate on coal from a group of mines. The rate of transportation on an article like coal absolutely controls the price at points of consumption, and therefore any change in the rate will vitally affect all competitors of the mines receiving a reduction. Such change in the rate will also seriously affect the tonnage movement, and therefore the carriers serving the competing mines are as much interested as the shippers themselves. It is not unusual in the Commission's work that a very modest-appearing complaint will gather weight in such proportions that by the time the proceeding is well under way the original parties to the case find themselves surrounded by many warring factions.

Permission must be obtained from the Commission for leave to intervene in a proceeding pending before it. A

formal petition is filed with the Commission setting forth the petitioner's interest in the proceeding, and, if leave is granted, the intervener is permitted to take active part in the proceedings, to have notice of hearings, to produce and cross-examine witnesses, to file briefs, and to be heard in person or by counsel at the oral argument.¹³

The Commission may consider together a group of cases all involving much the same issues, principles, or state of facts. This means that they will be heard, briefed, argued, and decided at the same time. The only effect such consolidation has upon the procedure is that the various parties are required to confer together and agree upon some plan for the proper presentation of the evidence and handling of the case so that unnecessary time will not be consumed in introducing cumulative evidence or in unnecessary repetition in briefs and upon the argument.

WITNESSES AND SUBPOENAS

It is very unusual in the practice before the Commission to experience difficulty in securing the attendance of the necessary witnesses upon the hearing. The complainant is, of course, anxious to offer his proof in support of the allegations contained in his petition and sees to it that the necessary witnesses are present at the time set for hearing.

The carriers, as a rule, are ready and willing to defend their rates and practices and appear at the hearing by skilled counsel and experienced traffic men. There is therefore an opportunity for the complainant or his

¹³ Sec. 2 of the Elkins Law; Commission's Rule II, shown in the appendix.

counsel, or the Commissioner or Examiner before whom the case is heard, to obtain at first hand from the carriers' representatives much valuable information bearing directly upon the issues involved.

Should either party at the hearing, however, desire the issuance of a subpoena to any particular witness, the Commissioner under the law has authority to issue it. If the hearing is before an Examiner, it is customary for him to have in his possession subpoenas signed by a Commissioner which he will issue in his discretion.

Subpoenas for the production of books and papers will be issued only upon application in writing to the Commission and this should be attended to well in advance of the hearing.¹⁴

REPARATION

When a complainant seeks to have the Commission exercise its authority under section 16 of the Act, and enter a finding that the complainant has been damaged, and award him a sum of money from the carrier or carriers as reparation, there are important details connected with the procedure in such a case. Reparation may be awarded for damage suffered from any violation of the Act. The record in a proceeding wherein the complainant is seeking reparation is one that must be made with great care, as the law commands that in reparation cases the Commission shall state its findings of fact; and if its order is to be worth anything to the complainant in the recovery of the sum named, the procedure must be in accordance with the letter of the law.

When the complainant intends to seek reparation upon past shipments at a rate which it is alleged is unreason-

¹⁴ Commission's Rule XII, shown in the appendix.

able or otherwise unlawful, he must include a prayer for reparation in the complaint at the time he attacks the reasonableness of the rate. There is nothing in the law requiring this, but it is a rule of the Commission and is founded upon reason.¹⁵

The petition should set out in detail the shipments involved, showing the origin, destination, date, car number and initial, weight, rate paid, rate claimed, reparation claimed, and routing so far as known to petitioner. These facts should appear in tabular form. When the case comes on for hearing, there should be filed in the record expense bills, bills of lading, etc. Where there is a large number of shipments involved, the Commission may permit the details as to them to be presented after the main issue of whether or not reparation shall be awarded is determined.^{15a}

The Act limits the right of recovery of damages to shipments that moved within two years prior to the time of filing the complaint. The Commission has held that the two years begins to run from the time the shipment was delivered to the consignee,¹⁶ so that the complaint can only include such shipments as were not delivered more than two years prior to the day the complaint is filed with the Commission. In fixing the date when a complaint is filed the Commission will adopt the date of filing of an informal complaint if such complaint is deemed to describe sufficiently the shipments and give other data necessary under the Act.

In cases where the Commission enters an award of reparation it uniformly allows interest at 6 per cent per

¹⁵ 12 I. C. C. Rep., 223.

^{15a} Mountain Ice Case, 21 I. C. C. Rep., 45.

¹⁶ This ruling has been sustained by the Commerce Court.

annum from the date the freight money was paid to the railroad company.

If the award of the Commission is not paid by the carriers, the complainant sues in the courts and the law makes the findings and order of the Commission *prima facie* evidence of the facts therein stated. The statute gives a party the choice of seeking reparation, in the first instance, before the Commission or suing directly in the courts for damages, but he may not do both.

SUSPENSION OF TARIFFS

The amendment to section 15 of the Act, passed in 1910, greatly increased the jurisdiction of the Commission by giving it the power to suspend the operation of any tariff filed with the Commission stating new rates, fares, or charges. This power ranks second only to the rate-making power bestowed upon the Commission in 1906.

The Commission may upon complaint, or upon its own motion, after reasonable notice to the carriers, enter upon a hearing concerning the propriety of such new rate, fare, or charge, pending which the Commission may suspend the operation of the schedule for 120 days, and for a further period of six months when necessary in order to complete its investigation.

The statute commands the Commission to give to suspension proceedings preference over all other questions pending before it and to decide them as speedily as possible. It further requires that at the hearing, if the rate involved is one that was increased after January 1, 1910, the burden of proof to show that the increased rate is just and reasonable shall be upon the carrier.

The Commission has therefore established a new docket known as the Investigation and Suspension Docket, upon which it enters all suspension matters and gives them prompt attention. One hundred twenty-two such cases were instituted during the past year. In the practical handling of these matters it has a Board of Suspensions which is composed of employes of the Commission and which handles all suspension matters in their preliminary stages. Tariffs filed with the Commission are effective thirty days after filing, and during this period, if shippers desire the suspension of a tariff, they are frequently given a preliminary hearing before the Board, but the aggrieved parties should act promptly and file their protest at least ten days before the effective date of the tariff.

A petition for suspension must indicate the schedule affected by its Interstate Commerce number and give specific reference to the parts thereof complained against, together with a statement of the grounds of such complaint. It is not necessary to obtain permission to intervene in cases heard under this docket. Any interested party may appear and participate in the proceeding.

Should the preliminary hearing or the application without the preliminary hearing result in the temporary suspension of the objectionable tariffs, the case then comes on for formal hearing. At the hearing the complainant is greatly assisted by the terms of the Act placing the burden of justifying the change upon the carriers. This reverses the usual order of things and the testimony of the carrier is taken first, so that complaining interests have the complete disclosure of the carrier's case before they proceed with their own. The carrier also files the opening and the reply briefs, which is the reverse of the case with ordinary complaints. Otherwise, the proceed-

ing follows the general course already indicated for hearings.

At the conclusion of the proceeding, the Commission enters an order either withdrawing its temporary suspension and permitting the tariffs to become effective or requiring the carriers to continue their former rates for a period of two years.

PROCEEDINGS UPON THE COMMISSION'S OWN MOTION

A large part of the Commission's duty to enforce the provisions of the Act is performed by means of the comprehensive, general, and sweeping investigations into the rates and practices of the carriers, which are undertaken by the Commission upon its own motion, and which the Act specifically gives it authority to institute, and to enter binding orders as a result thereof. There is always pending before the Commission one or more of these investigations. Such an inquiry as this was the investigation into the transit privileges accorded by the carriers upon shipments of grain, lumber, and other commodities. The Commission appoints an attorney to take particular charge of each one of these investigations, and the control of the hearings, production and examination of witnesses, etc., are largely left to him. One can scarcely appreciate the vast interests frequently affected by such an investigation. The transit investigation, in which the writer was the Commission's attorney, involved practically all the carriers of the country and hundreds of appearances were entered on behalf of milling, grain, lumber, cotton, and other industries. The hearings are usually of such importance as to be before a Commissioner or the Commission sitting as a body. The parties in interest are permitted to

enter appearances in person or by counsel, may produce and cross-examine witnesses, file briefs, and participate in the oral argument.

When one of these investigations is started it is well for all parties in any way interested to be represented, for there is no telling when something may develop that will seriously affect them. The Commission usually starts these investigations by entering a formal order instituting it, which order is served upon the carriers involved. So far as interests other than the carriers are concerned, it is given wide publication in the press of the country, so that all persons affected will have due notice thereof. The hearings are held in the important centers most affected by the subject matter, and their progress receives attention in the press and trade papers, thus further advising the public of its pendency.

FOURTH-SECTION INVESTIGATIONS

The fourth section of the Act makes it unlawful to charge more for a shorter than for a longer distance over the same line, or to charge more as a through rate than the sum of the intermediate rates.

The carriers are, however, permitted to apply to the Commission for relief from these requirements and the Commission sets these applications down for formal investigation. The general procedure is the same as before described, except that the entire burden of proof rests upon the carriers and as a rule the shipping interests do not appear, although the Commission welcomes their participation. The Fourth Section Board, composed of three employees of the Commission, handles all fourth-section matters in their preliminary stages.

At the conclusion of the proceeding the Commission enters an order either denying the carrier's application or granting it the permission it seeks. During the year 1912, 1,993 such applications were received by the Commission.

SWITCH CONNECTIONS

Under the first section of the Act a petition may be filed with the Commission for the purpose of compelling a common carrier to construct and maintain a switch connection with a lateral branch line of road or private side track, under certain conditions. While the trial of a case of this kind has features that are wholly peculiar to it, they pertain to matters of evidence intended to show the demand for exercise of the power of the Commission under the particular provision of the law invoked, and the formal procedure is the same as has already been described. The Supreme Court has recently decided that the use of the term "lateral branch line" limits the Act to a somewhat narrow class of lines known as "feeders," and does not include independent or parallel and competing lines of road.

THROUGH ROUTES AND JOINT RATES

In addition to the fundamental control which the Commission exercises over the carriers under the provisions of the statute dealing with the rates and practices of the carriers and requiring that they shall be reasonable and non-discriminatory, the public has a right under the law to file petitions seeking through routes and joint rates under section 15 of the Act. This power of the Commission is quite frequently invoked, and when the cause comes on for hearing the peculiar nature of the case is

reflected in the character of the evidence produced to show the demand for the exercise of this power of the Commission, while the formal procedure remains about the same as has already been described.

SPECIAL REPARATION DOCKET

The Commission's attention is constantly being called to instances where the carriers have collected money from shippers in the course of business which it appears they had no legal right to take. The collection may have been due to misconstruction of a tariff or some other such error. In view of the stringency of the law against rebates, however, the carrier is careful not to make refunds to shippers until the Commission is satisfied as to the reason for such refund. The payment of money to a shipper would be disclosed to the Commission in its regular inspection of the carrier's accounts.

All matters of this character are listed upon the Commission's Special Reparation Docket. The Commission furnishes the carrier with a blank application¹⁷ which it is required to execute and in which the carrier, among other things, admits that it collected the money in violation of law. Six thousand applications were received by the Commission during the year 1912 and approximately \$300,000 were refunded upon orders of the Commission. This work of the Commission is appropriately described in the following quotation taken from Conference Ruling No. 200.

It might be well to state that while cases coming forward on this docket are adjusted in an informal manner, this special docket is not an informal docket except in respect to the form

¹⁷ Form No. 5, shown in the appendix.

of pleadings and the character of the hearing. The Commission cannot on the special docket exceed the authority exercised by it on the formal docket, nor may it omit any requirement with respect to cases on the special docket that the law imposes on it in the disposition of cases on the formal docket. In all cases, whether on the formal or the special docket, the law requires a complaint and answer and a full hearing, and provides that where damages are awarded, the report of the Commission shall include the findings of fact on which the award is made. The Commission has endeavored to simplify the procedure on the special docket by accepting the application of the carrier as the equivalent of a complaint and answer, and by accepting as a sufficient compliance with the requirements of Section 15 for a full hearing its admission that the rate charged under the circumstances then existing was unreasonable.

It will therefore be observed that the Commission's action in special reparation cases springs from the same authority which it exercises in formal cases.

It not infrequently happens that a case will go from the special docket to the formal docket because the parties fail to comply with the rules under the special docket. Sometimes the parties appear at the formal hearing of a case and ask to have it go to the special docket. This will not be allowed because the efforts to settle upon the informal and special dockets have usually failed before the case is set down for formal hearing. After the formal hearing the Commission will have authority of law to decide the case; so when it is once set for hearing, economy of time requires that the Commission proceed at once to dispose of the case. The carriers are generally favorable to settlements on the special docket because the Commission ordinarily only orders the future rate established for one year, whereas, if the Commission con-

ducts a formal investigation, it requires, as a result thereof, the maintenance of the rate for two years.

DIVISION OF INQUIRY

The general duty of the Commission under the Act to see that the provisions of the law are enforced, makes it necessary for the Commission to give special attention to all information coming to it as to violations or supposed violations of the law and which entail criminal responsibility upon the perpetrators, particularly under section 10 of the Act, and also under the Elkins law.

In order to keep itself advised as to whether the law is being thus criminally violated, the Commission maintains a Division of Inquiry manned by a corps of skilled investigators known as special agents. The results of the work of this division go to the Attorney-General or to a grand jury in the locality where the violation of law occurred. Approximately one hundred indictments were obtained during the year 1912 for violations of the statutes. These include such offenses as collecting charges in excess of the tariff rates wherein the carriers and their employes are the ones indicted, or mis-billing of shipments by shippers in order to obtain rates which are really not applicable upon the shipments moved. Offenses of this latter kind are of course committed by the shippers and they alone are the ones indicted. The general run of indictments, however, involves devices resorted to by carriers and shippers to defeat the published rates, and in such cases it is the policy of the Commission to secure the indictment of all parties connected with the transaction (including the railroad company), its employes and agents and the shippers and consignees profiting by such schemes.

There is no form of procedure in connection with this work unless the Commission finds it necessary to examine certain witnesses under oath, and proceedings of this kind would come under the heading of "Proceedings upon the Commission's Own Motion," already described. ✓

DIVISION OF STATISTICS, ETC.

In addition to the work of the Commission involving formal procedure, with which we are particularly concerned, a very large part of the annual appropriation of approximately one million and a half dollars, which the Commission spends, and a large share of the personnel of the Commission's force, have to do with administrative matters such as the Division of Statistics, which gathers and compiles the statistics relating to the interstate railroads in the country; the division of carriers' accounts, which keeps a large force in the field continually going through the files and records of the carriers to see that their accounts are kept in accordance with the requirements of section 20 of the Act, and for the further purpose of investigating all items which appear to conflict with the carriers' responsibilities under the law. There are also the Accident Division, the Safety Appliance Division, and the recently organized service for the inspection of locomotive boilers.

The last Congress authorized and directed the Commission to proceed with the valuation of the railroads of the country, and this work is now being organized and it is estimated that it will cost several million dollars, employ hundreds of people, and take several years to complete.

One of the important duties of the Commission which

is sometimes overlooked is that imposed upon it by the statute of making recommendations to Congress for new legislation, and each year the annual report to Congress contains the Commission's views along this line. For instance, the recent accidents and resulting loss of life upon the New England railroads have been thoroughly investigated by the Commission during the past year under the law requiring it to investigate accidents, and it is understood that it will recommend to Congress at its coming session, that the Commission be given greater authority in compelling the carriers to adopt methods and devices which will promote safety in the operation of the railroads.

Under a provision in the fourth section of the Act, if a rail carrier should reduce its charges for the purpose of meeting water competition, and, after successfully meeting such competition, and driving the water carriers out of business, should then attempt to advance its rates, it will not be permitted to do so unless and until the Commission investigates the matter and enters an order permitting such change in rates or charges.

In addition to the regulation of rail carriers and water carriers when they are operated under joint control, management, or arrangement with rail carriers, the Commission is, by special legislation, given regulatory powers over express companies, pipe lines, sleeping car companies, and telephone, cable, and telegraph companies, including wireless companies.

The Panama Canal Act contains a provision which will develop into considerable importance in a few years. It prohibits a rail carrier from owning or controlling a competing water carrier after July 1, 1914, and authorizes the Commission to determine the fact as to compe-

tition and, under certain limitations, modify the application of the law in particular cases. This act also extends the Commission's jurisdiction to transportation by rail and water by authorizing it to require physical connection between lines of railroad and docks of water carriers and to establish through routes and joint rates over rail-and-water lines. This act grants to the Commission other powers of regulating rail-and-water lines.

CONCLUSION

The foregoing pages on practice before the Interstate Commerce Commission are intended to give a simple non-technical account of the Commission's work and what is expected of one going before it for the purpose of moving that body to action under the terms of the Act. It has been difficult to cover even this ground within the limits appropriate for the purpose in hand.

Before a person can call himself a commerce lawyer, however, he has a long road to travel. He should not only be well grounded in the law in its broadest aspect, but he must keep up with the current work of the Commission through its published opinions and annual reports. He should undertake to look somewhat into the history of transportation in general in this and other countries, and as time permits he should go back over the volumes containing the opinions of the Commission and the annual reports of that body since it was instituted.

Nor is this all. Since the passage of the Act, in 1887, there has been constant litigation under it in the federal courts and these decisions have a direct bearing upon the enforcement of the Act by the Commission and the rights of the various parties under the law. There are

involved questions of constitutional, statutory, and administrative law bearing upon the powers of the Commission and the application of these laws to transportation problems.

✓ No attempt has been made to cover the procedure of a case in the courts, as that subject is so involved with the shifting of jurisdiction by statutes from one court to another, as well as other inherent difficulties and statutory requirements, that it can be grasped only by the trained lawyer. As already stated, however, but a small percentage of the many thousands of proceedings before the Commission reach the courts and the present purpose is primarily to deal with that vast majority which end in a decision of the Commission.

It seems hardly necessary to add that the real outcome of a case depends not so much upon the formal procedure in the trial of the case as the proof offered at the hearing in substantiation of the complainant's cause and the skill with which the record is compiled by the parties. The evidence that should be advanced in particular cases is a subject concerning which little can be said in advance that will be of assistance. It all depends upon the facts peculiar to each case and the experience and knowledge of those presenting them.

TEST QUESTIONS

These questions are for the student to use in testing his knowledge of the assignment. The answers should be written out, but are not to be sent to the University.

1. How many kinds of proceedings before the Commission can you name?
2. With what branch of the Federal Government is the Commission most closely allied?
3. What are the duties of a Special Examiner presiding at the hearing?
4. What is expected of the complainant at the hearing?
5. How is the carrier usually represented at the hearing?
6. Upon what grounds can the courts review the findings of the Commission?
7. What findings of the Commission are final?
8. How are the criminal provisions of the law enforced?
9. How is leave for oral argument before the Commission obtained?
10. Where is oral argument before the Commission held?
11. Where is the hearing of the case conducted?
12. Before whom may hearings be held?
13. Before whom is the argument of the case always made?
14. Distinguish between the special docket and the informal docket.
15. How can the Commission be compelled to take jurisdiction under the law?
16. When is the issue in a proceeding joined?
17. Upon what theory are the Commission's rules of procedure based?
18. Name the officers and boards in the Commission who handle formal cases.
19. In what two classes of cases is the burden of proof upon the carriers?
20. What United States Supreme Court case points out the importance of the record in interstate commerce cases?

21. How are the transcripts of record distributed by the Commission?

22. Who may intervene in a proceeding before the Commission and how is permission obtained?

23. Distinguish between a petition for rehearing and a petition for reopening.

24. Why does the Commission discourage the filing of depositions?

25. When does the Statute of Limitations begin to run?

26. Upon what docket are cases involving the suspension of tariffs entered?

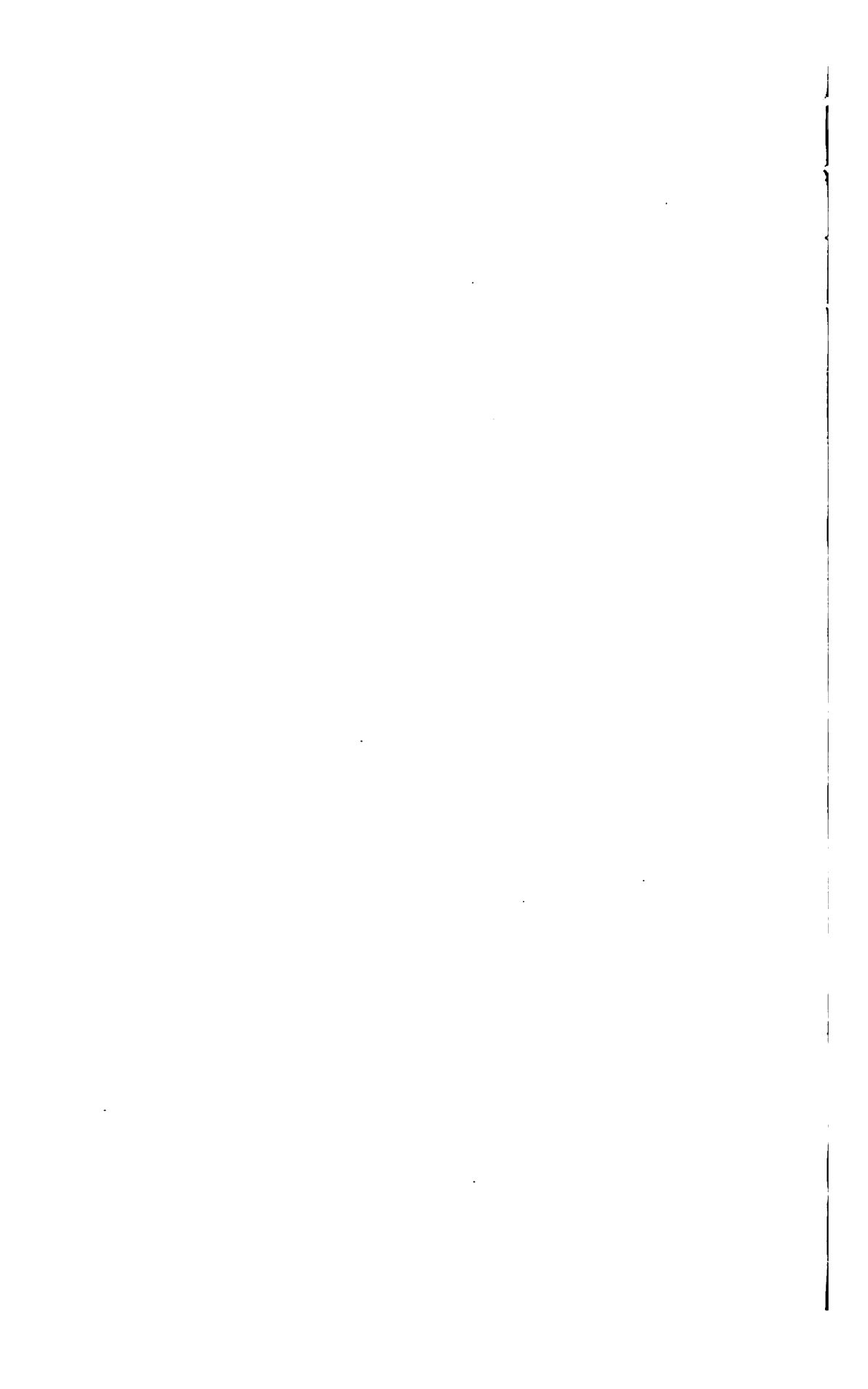
27. What are some of the new powers and duties given to the Commission by recent legislation?

28. Who may participate in proceedings under the Investigation and Suspension Docket?

APPENDIX

¶The Rules of Practice before the Commission which follow should be very carefully studied, especially by those who may have occasion to have any dealings with the Interstate Commerce Commission relative to formal cases. As the pamphlet containing these rules was furnished by the Government Printer, the notation on the last page refers to the publication of the rules and not to the complete treatise.

Form No. 5 should be carefully studied with a view to ascertaining just what information the carriers are required to furnish the Interstate Commerce Commission in cases where they are willing to make reparation without the necessity of a formal case.



INTERSTATE COMMERCE COMMISSION

cf

RULES OF PRACTICE

BEFORE THE

COMMISSION

IN CASES AND PROCEEDINGS
UNDER THE ACT TO REGULATE
COMMERCE

REVISED, AMENDED, AND ADOPTED
MARCH 20, 1913



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1913

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Informal Reparation Form

ORDER.

By the Commission:

[SEAL.]

.....	}	Complainant's No.
.....		 Co. Claim No.
.....		 Co. Claim No.
.....		 Co. Claim No.
.....		Request for authority to refund \$.....

The _____
Company respectfully requests an order herein authorizing the payment to the above-named claimant_____, of _____, State of _____
of the sum of _____ Dollars
(\$ _____), as special reparation in connection with the following shipment: _____
Commodity _____
Number of shipments or carloads _____ aggregate weight _____
From _____ to _____
(Point of origin.) (Destination.)
Consignor _____, consignee _____
Bill of lading issued by _____ Co., at _____
(Use initials.)

No. 5—CONTINUED

Date....., 19 Shipment..... moved as follows:

..... Co., from to via
(Use initials.)
 Co., from to via
 Co., from to via

Aggregate freight charges actually collected, \$....., date paid, ... 19

By whom paid Date of delivery, ... 19
(Consignor or consignee.)

(If through rate lawfully applicable, use these spaces.)

Rate lawfully applicable per { ton or cwt. } carload min. for ft. car.

Tariff authority I. C. C. No., page, effective.....

(If local rates lawfully applicable, use these spaces.)

LOCAL FROM—	To—	Rate.	C.I. Min.	NAME OF TARIFF.	I.C.C. No.	Page.	Date effective.
.....							
.....							
.....							
.....							

Rate sought per { ton or cwt. } carload min. wt. for ft. car.
 to be applied

Tariff authority..... I. C. C. No., page, effective.....

Aggregate freight charges at claimed rate would be \$.....

Explanation and comments:

(Here may follow such general comments or explanation as the case may require. In case shipment was reconsigned, state date of reconsigning order, point of reconsignment, and tariff authority for reconsignment. In case shipment was misrouted by initial carrier, state routing instructions given by consignor, if any, and the proper route in detail; with specific admission that misrouting was the result of error of carrier's agent, if such was the fact.)

No. 5—CONTINUED

Exhibit 1, attached, is a Statement of Billing in the standard form, and corresponds to the checked billing of the auditing department.

It is admitted that the rate lawfully applicable at the time and over the route shipment moved was, under all the circumstances and conditions then existing, excessive and unreasonable.

It is agreed that the order of the Commission authorizing refund herein may require that the published tariff rates and rules upon which adjustment is based shall be maintained (as maxima) for a period of one year from the date this application is filed.

The undersigned who makes this application in the name of his company certifies that he has familiarized himself with all the facts and figures upon which this application for reparation is made and knows the same to be correct.

Respectfully submitted,

..... Company,
Defendant,
.....
By *
(City.) (State.) (Personal signature.)
....., 19 Its

The undersigned companies join in the foregoing application:

..... Company,
Defendant,
By *
(Personal signature.)
Its

..... Company,
Defendant,
By *
(Personal signature.)
Its

* The foregoing application must be personally signed by an executive or general officer of the accounting or traffic department, and not by a subordinate.

I, ..., have carefully read the foregoing application and certify that the facts as therein set forth have been verified by a check against the accounts affected as audited under my direction, and I now certify that the records of this company show:

1. That the aggregate weight was pounds.
2. That the aggregate freight charge actually collected and retained was \$.....
3. That the amount of the refund to which the above-named complainant {is
are} entitled,

on the basis of the reduced rate, is \$....., and that the present rate is \$.....
per cwt.
{too.

4. The attached statement of billing, Exhibit 1, corresponds to the checked billing of the auditing department.

.....
(Personal signature.)

†
(Comptroller or General Auditor.)

† This certificate must be personally signed by the comptroller or the accounting officer in charge of freight revenue accounts, and not by a subordinate.

The foregoing certificate by the accounting officer of the applicant carrier must be used in every case and must show the aggregate charges on the shipments. But if the charges, or part of the charges, were collected by another carrier or carriers the following certificate will also be used, and in that event the above certificate, so far as the charges collected are concerned, will be understood to be based on and qualified by the assumed correctness of the following certificate.

No. 5—CONTINUED

§ 50. If the applicant carrier did not collect the freight charges, the carrier which made the collection will use the following supplemental certificate; and if a third carrier collected part of the charges, the special certificate will also be used, and the supplemental certificate will be understood to be based on and qualified by the assumed correctness of the special certificate.

SUPPLEMENTAL CERTIFICATE.

I, _____ the _____ of the _____

Rail _____ Company, have carefully read the foregoing application and now certify that the records and accounts of this company, as audited under my direction, show:

1. That the aggregate weight was _____ pounds.
2. That the aggregate freight charge, actually collected and retained, was \$ _____.
3. That the attached statement of billing, Exhibit 1, corresponds to the checked billing of the auditing department of this company.

(Comptroller or General Auditor.)

* This certificate must be personally signed by the comptroller or accounting officer in charge of freight revenue accounts, not by a subordinate.

§ 51. When a carrier, other than the applicant and not the carrier using the supplemental certificate, has collected any part of the charges the following special certificate will also be used:

SPECIAL CERTIFICATE.

I, _____, the _____ of the _____ Rail _____ Company, have carefully read the foregoing application and now certify that the records and accounts of this company, as audited under my direction, show:

1. That the aggregate weight was _____ pounds.
2. That additional freight charges were collected by this company to the amount of \$ _____, no part of which has been refunded.

(Personal signature.)

(Comptroller or General Auditor.)

† This certificate must be personally signed by the comptroller or accounting officer in charge of freight revenue accounts, not by a subordinate.

INSTRUCTIONS—READ CAREFULLY.

1. The Commission will not ordinarily take favorable action on an application for special reparation authority where the case is not presented to it within six months after the shipment moved, unless the rate on which the adjustment is sought was actually established within six months after the date of the movement.
2. Under section 16 of the act to regulate commerce, as interpreted by the Commission, all claims for reparation are absolutely barred if not filed within two years from the time the cause of action accrues.
3. This application should be accompanied by the original paid freight bills, which will be returned by the Commission after the claim has been acted upon.
4. If the rate on which this application is based has been involved in a case previously acted upon or presented to the Commission, it is important that the fact be noted in the space for Remarks in order to avoid duplication of the one-year order.
5. The Commission will authorize payment only to the consignor or consignee, and not in favor of an assignee. In cases where the application is in favor of the person shown on the attached shipping papers to have directly paid the freight charges, such order as may be entered will read in favor of that person; but where the application is for authority to refund to the consignee when the papers show that the charges were paid by the consignor, or vice versa, the Commission requires that a stipulation be filed with the application signed by the consignor, by the consignee, and by an executive or general officer of the carrier in substantially the following form:

TITLE. (Here insert names of complainant and defendants as in application to which stipulation relates.)

The undersigned _____, the consignor of the following-described shipment (here insert date, car number, commodity, and points of origin and destination) and _____, the consignee thereof, and the undersigned _____ Rail _____ Company, stipulate and agree that any order entered in the above-entitled informal complaint for a refund on account of the excessive freight charges collected on said shipment shall be in favor of (here insert name of consignor or consignee, as case may be).

(Signature of consignor.)

(Signature of consignee.)

Rail _____ Co.

By _____

Its _____

E. J. N. J.
5/28/14



